

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALIFORNIA CAPITAL ACCESS PROGRAM (CalCAP)**

Meeting Date: February 22, 2011

Consideration and Approval of Emergency and Permanent Rulemaking Process

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Summary. The California Capital Access Program (CalCAP) is the intended recipient of Federal funds from the State Small Business Credit Initiative (SSBCI) totaling approximately \$84.4 million. Receipt of these funds will require modification of the CalCAP regulations. Staff requests approval to amend current CalCAP emergency regulations to expand access to the benefits of CalCAP primarily by amending the “Qualified Loan” definition and adding a new section in the regulations that relates solely to the participation in the SSBCI. Upon approval staff will proceed concurrently with the emergency and permanent rulemaking process.

Background.

Business Model. The CalCAP Program is designed to encourage lending to small businesses that might otherwise be outside the normal underwriting criteria of participating lenders. To accomplish this, CalCAP establishes a loan loss reserve account for each participating lender in which borrowers and lenders are each required to deposit between 2% and 3.5% of the eligible loan amount (a combined deposit of 4% - 7%). In addition, CPCFA contributes 150% of the Lender premium, making the total Loss Reserve Account deposit from the Borrower, Lender, and CPCFA between 7% and 12.25%.

As the result of receiving State funds and in anticipation of receiving Federal funds, the Authority agreed in October of 2010 to increase CalCAP’s contribution to the Loss Reserve Accounts, with plans to eventually match the premiums paid by both the Borrower and Lender. When the Federal funds are available, the Authority will contribute between 4% and 7% of each qualified loan towards the Loss Reserve Account, which will make the total deposit from the Borrower, Lender, and CPCFA between 8% and 14%.

Need for regulation changes. In response to receiving \$84.4 million from the SSBCI and \$6 million from the passage of California’s AB 1632, CalCAP is proposing changes to the regulations to allow more businesses to participate. The proposed amendments to the existing regulations are the result of preliminary conversations with lenders and staff recommendations.

Stakeholder Involvement. On February 15, 2011, staff held a *Lender Roundtable Conference Call* to provide an open forum for staff to discuss the upcoming funding and to present the proposed changes to the program.

Summary of Changes. The new proposed amendments to the existing regulations were circulated to all CalCAP participating lenders before the *Lender Roundtable Conference Call* and each item was discussed at length. The proposed amendments are outlined below. Attachment A shows the current proposed regulations changes in red; the changes made last November are shown in blue. These changes will help CalCAP address U.S. Treasury

requirements. We anticipate receiving additional guidance from U.S. Treasury in the next few weeks.

Substantive Regulation Changes

1. **Section 8070 (d)** *Amend the definition of “Fees” or “Fee” to include “Premiums” or “Premium.”* Staff proposes adding terms because they are more familiar to the CalCAP Lenders and it will provide better consistency with the Federal statute.
2. **Section 8070(s).** *Amend the definition of “Qualified Loan”.* The current list of exclusions was originally derived primarily from federal tax-exempt bond law which prohibits certain project categories from receiving tax-exempt bond funds and enrolling in CalCAP. Prior to the receipt of the SSBCI funds and State funds, CalCAP was solely funded by the fees collected from businesses that received tax-exempt bond financing. As a precautionary measure, CPCFA used the same restrictions in CalCAP as applied to the use of bond proceeds. Over time, the CPCFA Board has also included additional exclusions for policy reasons. The receipt of the State and Federal funds as an alternate source to pay for premiums allows separation of the current list of prohibited businesses based on the type of funding being used for the Authority’s Matching Contribution.
3. **Section 8072 (c).** *Amend the information required for CalCAP loan enrollment.* Most of the additions are items required by the U.S Treasury for the Federal funds CalCAP is receiving such as: whether the business is a non-profit, has been open for two years or more, or is owned by a veteran. We are also removing a requirement for the Borrower phone number since it is unnecessary.
4. **Section 8078.2.** *Add a Federal Capital Access Program and Funding section.* This section includes all elements required to receive the Federal funds.

Attachment B is the November 2010 Staff Summary which explains the changes made at that time. These changes were adopted as emergency regulations. It is staff’s intention to combine the November 2010 emergency regulations with the regulations being discussed today during the permanent regulation process.

Regulatory Process. After Authority approval to amend the existing regulations, emergency and regular rulemaking packages will be filed with the Office of Administrative Law (OAL). The Authority may adopt and amend regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public may comment on the proposed amended regulations within 5 calendar days after the Authority files the regulations for OAL review. OAL may review the regulations up to 10 calendar days. After OAL approval, the emergency regulations are effective for 180 days during which the Authority will begin the regular process. The regular rulemaking package will be presented to the Board prior to the expiration of the emergency regulations.

To begin the regular rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to our

participating lenders and interested persons, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a regular rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

| | |
|-------------------|--|
| February 16, 2011 | 5-day Notice posted on CalCAP site and sent to Lenders. |
| February 22, 2011 | The Board approves the emergency regulations. |
| February 24, 2011 | Emergency regulations filed with OAL. |
| March 1, 2011 | Public comment period ends. |
| March 7, 2011 | OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect. |
| September 2, 2011 | Emergency regulations expire. |

Permanent Regulations

| | |
|----------------|---|
| April 5, 2011 | The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued. |
| April 15, 2011 | OAL publishes Notice and 45-day public comment period begins. |
| May 30, 2011 | Public comment period regarding proposed regulations ends. |
| May 31, 2011 | Public Hearing Scheduled. |
| June 1, 2011 | Deliver permanent regulation package (Certificate of Compliance) to OAL for 30-day review* |
| July 1, 2011 | OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. |
| July 1, 2011 | Permanent regulations become effective. |

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

| | |
|---------------|--|
| June 1, 2011 | Proposed regulation amendments are modified and Notice Proposed Changes is issued to initiate a 15-day comment period. |
| June 16, 2011 | 15-day comment period ends. |
| June 17, 2011 | Deliver permanent regulation package to OAL for 30-day review. |

July 18, 2011

OAL issues Approval of Certificate of Compliance and
files regulations with the Secretary of State.
Permanent regulations become effective.

Recommendation. Staff recommends adoption of a resolution to amend regulations for the CalCAP Program and authorize staff to undertake emergency and regular rulemaking proceedings and other actions related to CalCAP regulation revisions. Staff is also requesting the Board's permission to make corrections to regulations proposed today and last November without returning to the Board.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING
EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER
ACTIONS RELATED THERETO, INCLUDING THE PUBLIC NOTICE AND
COMMENT PROCEDURES**

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) and 44559.5(f) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority needs to place into regulation certain items in order to accept and expend Federal funds for the program as authorized by California Health and Safety Code Section 44559.11; and

WHEREAS, Authority staff has been advised by federal officials that certain additional changes may be made to the federal guidelines for the State Small Business Credit Initiative; such changes may require additional change to CPCA's Program regulations;

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its Capital Access Program for Small Businesses (the "Program") set forth in Article 7 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the February 22, 2011, meeting are hereby approved in substantially the form submitted. The Chair, Executive Director, or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with the public notice and comment procedures and file such regulations, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as permanent regulations.

Section 2. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required to address changes made after the date of this resolution in the federal requirements for participation in the State Small Business Credit Initiative, and to execute and deliver any and all documents with the Office of Administrative

Law for the purposes of adopting any such changes in the form of emergency regulations and later as permanent regulations.

Section 4. This resolution shall take effect immediately upon its approval

Attachment A

PROPOSED TEXT OF REGULATIONS

Title 4. Business Regulations
Division 11. California Pollution Control Financing Authority
Article 7. Capital Access Program For Small Businesses

8070. Definitions. In addition to the definitions in Section 8020, the following terms shall have the following definitions, unless the context requires otherwise:

- (a) "Borrower" means a Qualified Business which obtains a Qualified Loan from a Participating Financial Institution.
- (b) "Early Stage Loan" means each of the first \$500,000 of Qualified Loan made by a Participating Financial Institution.
- (c) "Executive Director" means the Executive Director of the California Pollution Control Financing Authority, or his or her designee from time to time.
- (d) "Fees" or "Fee" and "Premiums" or "Premium" means a non-refundable fees or fee as set forth in Health and Safety Code Section 44559.4(c).
- (e) "Financial Institution" means an institution as set forth in Health and Safety Code Section 44559.1(d)
- (f) "Independent Contributor" means any individual, company, corporation, institution, foundation, utility, government agency or other entity, including any consortium of these persons or entities, whether public or private (but excluding any Borrower), that, pursuant to the provisions of this Article, pays to a Loss Reserve Account the Matching Contribution and/or Fees payable by the Borrower and/or the Financial Institution.
- (g) "Individual" means a natural person, together, if applicable, with any of his or her spouse, parents, siblings or children or the parents or spouse of any of them.
- (h) "Law" means Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the California Health and Safety Code, as amended from time to time.
- (i) "Loss Reserve Account" means an account held by a Program Trustee or by any Participating Financial Institution that is established and maintained by the Authority for the benefit of a Participating Financial Institution for the purposes set forth in Section 8073.
- (j) "Matching Contribution" means a contribution to a Loss Reserve Account as set forth in Health and Safety Code Section 44559.4(d)(1).
- (k) "Money Market Fund" means an open-ended management investment company regulated under the Investment Company Act of 1940, as amended, which values its securities pursuant to Section 270.2a-7 of Title 17 of the Code of Federal Regulations.
- (l) "Participating Financial Institution" means a Financial Institution that has been approved by the Authority to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in the Law and this Article and as may be required by any applicable federal law providing matching funding.
- (m) "Passive Real Estate Ownership" means ownership of real estate for the purpose of deriving income from speculation, trade or rental, but does not include any of the following:
 - (1) The ownership of that portion of real estate being used or intended to be used for the operation of the business of the owner of the real estate; or
 - (2) The ownership of real estate for the purpose of construction or renovation, until the completion of the construction or renovation phase. For purposes of clause (1) above, the Borrower must be using or planning to use upon acquisition or construction of a building, at least 51 percent of the space in an existing building or at least 67 percent of the space in a newly constructed building. The requirements of clause (1) above will be deemed to be satisfied when a Participating Financial

Institution makes a Qualified Loan to an Individual, or to a partnership or trust wholly owned or controlled by one or more Individuals, for the purpose of financing property that will be leased to a Qualified Business that is wholly owned by those same Individuals, and in such case the Qualified Loan will be deemed to be made also to such Qualified Business.

(n) "Primary business location in California" means that a business will be deemed to be located in California if either:

(1) a majority of the employees of the business are located in California; or

(2) the Executive Director determines that the Primary business location is in California by finding that the average of the "Payroll Factor" as defined in Revenue and Taxation Code Section 25132, the "Income Factor" as defined in Revenue and Taxation Code Section 25128, and the "Sales Factor" as defined in Revenue and Taxation Code Section 25134 is greater than 50 percent.

(o) "Primary economic effect in California" means, as applied to a business activity, that either of the following conditions exists:

(1) At least 51 percent of the total revenues of the business activity are generated in California; or

(2) At least 51 percent of the total jobs of the business activity are created or retained in California.

(p) "Program" means the Capital Access Loan Program for Small Businesses established pursuant to the Law.

(q) "Program Trustee" means a bank or trust company, or the State Treasurer, chosen by the Authority from time to time to hold or administer some or all of the Loss Reserve Accounts.

(r) "Qualified Business" and "Small Business Concern" means a Small Business Concern that meets both of the following criteria: business as set forth in Health and Safety Code Section 44559.1 (i), that may be an independently owned and operated business that is not dominant in its field of operation, and that together with affiliates, has 500 or fewer employees.

(1) It is a corporation, partnership, cooperative, or other entity, whether that entity is a nonprofit entity or an entity established for profit, that is authorized to conduct business in California.

(2) It has its Primary business location in California.

(s) "Qualified Loan" means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business for any business activity that has its Primary economic effect in California. A Qualified Loan may be made in the form of a line of credit, in which case the Participating Financial Institution shall specify the amount of the line of credit to be covered under the Program, which may be equal to the maximum commitment under the line of credit or an amount that is less than the maximum commitment. "Qualified Loan" does not include any of the following:

(1) A loan for the construction or purchase of residential housing.

(2) A loan to finance Passive Real Estate Ownership.

(3) A loan for the refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance.

(4) A loan, the proceeds of which will be used

(A) to provide any of the following facilities, regardless of the source of funds used for the Authority's matching contribution: massage parlor, hot tub facility, racetrack, facility primarily used for gambling or to facilitate gambling, or store whose principal business is the sale of alcoholic beverages for consumption off premises, bars, a store or other facility whose principal business is the sale of firearms, a store or other facility whose principal business is the manufacture or sale of tobacco or tobacco products, any religious facility or organization, escort service, nudist camp, adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography), gun club, shooting range or gallery.

(B) to provide any of the following facilities when the Authority's matching contributions will be paid for with fees collected from the issuance of tax-exempt bond sales: all items listed in (A) and private or commercial golf course, country club, spas that provide massage services, tennis club, skating facility (including roller skating, skateboard, and ice skating), racquet sports facility (including any handball or racquetball court), suntan facility, airplane, aircraft, skybox (or other private luxury box), or health club facility.

~~(C)-(B)~~ in any manner that could cause the interest on any bonds previously issued by the Authority to become subject to federal income tax, as specified in writing to all Participating Financial Institutions by the Executive Director.

(5) any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program.

(6) any loan that exceeds \$5,000,000.

(7) any loan or portion thereof to the extent that enrollment of the loan will cause the Borrower (including all related entities among which a common enterprise exists) to have a total enrolled principal amount ~~from all Participating Financial Institutions~~ in excess of ~~\$1,500,000~~ \$2,500,000 at any Participating Financial Institution.

(t) "Severely Affected Community" means any area classified as an enterprise zone pursuant to the Enterprise Zone Act, Chapter 12.8 (commencing at Section 7070) of Division 7 of Title 1 of the California Government Code; any area, as designated by the Executive Director, contiguous to the boundaries of a military base designated for closure pursuant to Public Law 101-150, as amended; and any other comparable economically distressed geographic area so designated by the Executive Director from time to time.

(u) "Small Business Assistance Fund" means a fund of that name created by the Authority.

~~(v) "Small Business Concern" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years.~~

~~(vw)~~ "Standards" means the criteria, limited to geographical area and/or type of business, to be used by an Independent Contributor in selecting businesses to assist through the Program.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.

Reference: Sections 44559.1, 44559.2, 44559.3, 44559.4, 44559.5, 44559.7 and 44559.9 Division 27, Health and Safety Code.

§ 8072. Loan Enrollment.

(a) The terms and conditions of Qualified Loans, including interest rates, fees and other conditions, shall be determined solely by agreement of the Participating Financial Institution and the Borrower.

(b) A Participating Financial Institution shall be authorized to enroll under the Program all or a part of any Qualified Loan:

(1) by notifying the Authority in writing, within 10 business days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Participating Financial Institution makes a Qualified Loan is the date on which the Participating Financial Institution first disburses proceeds of the Qualified Loan to the Borrower; and

(2) by transmitting to the Authority the Fees collected from the Participating Financial Institution and the Borrower, or from an Independent Contributor on behalf of the Borrower and/or the Authority, in connection with the Qualified Loan, and by providing written evidence that the Fees have been

deposited in a Loss Reserve Account held by either the Participating Financial Institution or the Program Trustee.

(c) The notification to the Authority shall include at least the following information:

- (1) Name, D/B/A (if any), and address, ~~telephone and fax number of the Borrower.~~
- (2) Brief description of the Borrower's business and regular activities, either the SIC Code(s) or the NAICS Code(s) applicable to such business, and the amount of its annual revenues.
- (3) ~~Brief description of the Borrower's~~ Whether this business is: a non-profit, has been open for two years or more, and is owned by of the following: a woman, minority, or veteran.
- (4) Brief summary of the intended use of the proceeds of the Qualified Loan.
- (5) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled); and the lender loan number
- (6) Type of the Qualified Loan (e.g., line of credit, term loan, ~~equipment loan~~).
- (7) Date of the Qualified Loan.
- (8) Interest rate applicable to the Qualified Loan.
- (9) Term of the Qualified Loan.
- (10) Geographic location of the Qualified Business and the location of the facilities being financed if different.
- (11) Whether the Qualified Business or the location of the facilities being financed is in a Severely Affected Community.
- (12) Whether the loan is secured.
- (13) Whether the loan is a refinancing, and if so, whether the prior loan was enrolled under the Program, and whether the amount of the loan was increased as part of the refinancing
- (14) Agreed amount of the Fees payable by each of the Borrower and the Participating Financial Institution.
- (15) Whether any portion of the Fees payable by the Borrower or the Matching Contribution was or is to be paid by an Independent Contributor; the identity of such Independent Contributor; and a certification that the Independent Contributor has approved the use of its funds to pay such Fees or Matching Contribution in connection with the Qualified Loan.
- (16) Number of persons currently employed by the Borrower, and number of jobs expected to be created, retained or affected by the Qualified Loan.
- (17) Certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
- (18) Certification that the Qualified Loan is for a business activity that has its Primary economic effect in California.
- (19) Certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
- (20) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has no legal, beneficial or equitable interest in the Fees or the Matching Contribution.
- (21) Certification that the principal enrolled amount of the loan (~~without regard to the amount to be enrolled~~) does not exceed ~~\$1,500,000~~ \$2,500,000.
- (22) Certification that the Participating Financial Institution has notified the Borrower if the Participating Financial Institution's share of the Fees for the Qualified Loan have been paid by the Borrower from loan proceeds.
- (23) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable federal banking regulations.

The Participating Financial Institution shall be authorized to base the information requested by subsections (4), (16), (17), (18) and (21) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.

(24) Certification that the Participating Financial Institution has obtained a written representation from the Borrower that it has secured or made application for all applicable licenses or permits needed to conduct business.

(25) Certification from the Participating Financial Institution that it has not, and will not, enroll the same loan or portion thereof in any other government program substantially similar to the Program.

(26) Certification that the Borrower does not meet the Participating Financial Institution's normal underwriting criteria for making loans of the type sought to be enrolled and that without enrollment, the Participating Financial Institution would not make a loan.

(d) If a Borrower seeking a loan from a Participating Financial Institution has less than a majority of its employees in California, the Participating Financial Institution shall be authorized to submit information to, and seek a determination from, the Executive Director that such Borrower has its Primary business location in California. Such determination shall be made by the Executive Director within 10 days of receipt of a written request from a Participating Financial Institution containing information about the business activities of the proposed Borrower.

(e) If a Borrower seeking a Qualified Loan from a Participating Financial Institution is an employee, member, director, officer, principle shareholder, or affiliate of the Participating Financial Institution, the terms and the conditions of the Qualified Loan and the internal procedures used to approve the Qualified Loan must comply with the following requirements:

(1) If the Participating Financial Institution is a federal-chartered bank, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 371c, 371c-1, 375a, and 375b of the Title 12 of the United States Code, and Sections 215.4 of Title 12 of the Code of Federal Regulations.

(2) If the Participating Financial Institution is a state-chartered bank, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 3370 et seq. of the Financial Code, and Sections 10.19300 to 10.19302 of Title 10 of the California Code of Regulations.

(3) If the Participating Financial Institution is a federal-chartered savings association, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Section 1468 of Title 12 of the United States Code.

(4) If the Participating Financial Institution is a state-chartered savings association, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Sections 6503 and 6529 of the Financial Code.

(5) If the Participating Financial Institution is a federal-chartered credit union, the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1757 and 1761c of Title 12 of the United States Code and Section 701.21(d) of Title 12 of the Code of Federal Regulations.

(6) If the Participating Financial Institution is a state-chartered credit union, the Qualified Loan must be made in accordance with all applicable state banking laws that regulate conflicts of interests and insider transactions and Section 15050 of the Financial Code.

(7) If the Participating Financial Institution is a not-for-profit certified community development financial institution (CDFI), the Qualified Loan must be made in accordance with all applicable federal banking laws that regulate conflicts of interests and insider transactions and Sections 1805.807 of Title 12 of the Code of Federal Regulations.

(8) If the Participating Financial Institution is a lending institution as described in Section 44559.1(d)(2) of the Health and Safety Code, the Qualified Loan must be made in accordance with any applicable federal laws that regulate conflicts of interests and insider transactions and Section 120.140 of Title 13 of the Code of Federal Regulations.

(f) The Participating Financial Institution shall pre-qualify with the Authority any qualified loan with a principal amount of \$500,000 or more. Pre-qualifications shall be valid for six (6) months.

(g) The Authority shall, upon receipt of documentation and Fees from the Participating Financial Institution, enroll the Qualified Loan if the Executive Director determines that the Qualified Loan meets the requirements of the Law and this Article. The Executive Director shall notify the Participating Financial Institution of enrollment within 10 business days after receipt by the Authority of all documentation and Fees required by the Law and/or this Article. The Executive Director's determination whether a loan shall be enrolled in the Program shall be final. The Executive Director shall be authorized to review an application for enrollment submitted by a Participating Financial Institution in advance of the making of the loan, and notify the institution whether such loan meets the requirements of the Law and this Article.

(h) Upon enrollment of a Qualified Loan, the Matching Contribution shall be transferred for deposit in the Loss Reserve Account (1) by the Authority or (2) by an Independent Contributor, and the Program Trustee shall notify the Participating Financial Institution of the transfer and of the source of funds from which the transfer was made.

(i) If the amount is increased, or previously enrolled CalCAP loans are combined, a new loan enrollment form shall be submitted, and Fees (if applicable) shall be transmitted or deposited pursuant to Section 8072(b)(2) based on the increased amount.

~~(j) The Participating Financial Institution shall notify the Authority of the work out status on Qualified Loans for which extension/renewal or charge off status is not yet clear. The "Notification of Work Out Status" form provided by the Authority shall be used to notify the Authority. The Participating Financial Institution shall have up to 240 days from such initial notification to inform the Authority of re-enrollment or charge off.~~

(j) Without regard to the term of the loan, the term of enrollment in the Program shall not exceed ten years.

Note: Authority cited: Sections 44520 and 44559.5(f), Division 27, Health and Safety Code.

Reference: Sections 44559.2 and 44559.4, Division 27, Health and Safety Code.

§8078.2 Federal Capital Access Program and Funding

(a) Where the Matching Contribution comes from funds provided under the State Small Business Credit Initiative enacted pursuant to the Small Business Jobs Act (H.R. 5297, passed in 2010) the following shall apply, notwithstanding any other provision of this article:

(b) "Financial Institution" also includes all those listed in Health and Safety Code Section 44559.1

(d) and all certified community development financial institutions whether or not organized for profit.

(c) Each Participating Financial Institution should submit quarterly reports containing statistical data regarding how the loans are being used in underserved communities.

(d) “Qualified Loan” does not include any of the following business types:

(1) Real estate firms, when the real property will be held for investment purposes as opposed to loans to otherwise eligible small business concerns for the purpose of occupying the real estate being acquired.

(2) Firms involved in speculative activities that develop profits from fluctuations in price rather than through the normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of legitimate risk management strategies to guard against price fluctuations related to the regular activities of the business

(3) Firms involved in lending activities, such as banks, finance companies, factors, leasing companies, insurance companies (but excluding agents of insurance companies), and any other firm whose stock in trade is money.

(4) Pyramid sales plans, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants.

(5) Firms engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted. Included in these activities are the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution.

(6) Gambling activities, including any business whose principal activity is gambling. Except for a business which obtains less than one-third of their annual gross income from either the sale of official state lottery tickets under a state license, or legal gambling activities licensed and supervised by a state authority.

(7) Charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and churches and organizations promoting religious objectives.

(8) Other businesses that may be restricted by federal fund law or the Department of Treasury.

(e) Federal capital access funds shall not be used for the following prohibited purposes:

(1) Refinancing existing debt where the lender is in a position to sustain a loss and the government (state and/or federal) would take over that loss through refinancing;

(2) Effecting a partial change of business ownership or a change that will not benefit the business;

(3) Permitting the reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business's continuance;

(4) Repaying delinquent state or federal withholding taxes or other funds that should be held in trust or escrow; and

(5) Financing a non-business purpose;

(6) Covering the uncovered portion of an SBA loan;

(7) Support existing extension of credit, including but not limited to prior loans, lines of credit or other borrowings that were previously made available as part of a state small business credit enhancement program.

(f) The Participating Financial Institution must obtain assurance from the Borrower that the loan will:

(1) be used for a business purpose.

(2) not be used for businesses purposes prohibited by the U.S. Treasury.

(3) not be used to finance ineligible businesses.

(g) The Matching Contribution shall be equal to the sum of the fees paid by the Borrower and Lender.

(h) No more than \$5,000,000 shall be borrowed by any one Borrower using the State Small Business Credit Initiative funds.

(i) The Participating Financial Institution must certify, in writing, to each of the following:

(1) It will make available to the Treasury Inspector General all books and records related to the use of the Allocated Funds, subject to the Right of Financial Privacy Act (12 U.S.C §3401 et seq.) as applicable;

(2) It is in compliance with the requirements of 31 C.F.R. §103.121.; and

(3) None of its Principals, as defined by the U.S. Treasury, have been convicted of a sex offense against a minor (as such terms are defined in Section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)).

Attachment B

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
CALIFORNIA CAPITAL ACCESS PROGRAM (CalCAP)

Meeting Date: November 17, 2010

Consideration and Approval of Emergency and Permanent Rulemaking Process

Prepared by: Kamika McGill

Summary. The California Capital Access Program (CalCAP) is the intended recipient of both Federal and State funds totaling approximately \$90 million. Receipt of these funds will require modification of the CalCAP regulations. Staff requests approval to file emergency regulations amending the existing CalCAP regulations to expand access to the benefits of CalCAP primarily by increasing the Qualified Loan size and Qualified Business size. Upon approval staff will proceed concurrently with the emergency and permanent rulemaking process.

Background.

Business Model. The CalCAP Program is designed to encourage lending to small businesses that might otherwise be outside the normal underwriting criteria of participating lenders. To accomplish this, CalCAP establishes a loan loss reserve account for each lender in which borrowers and lenders are each required to deposit between 2% and 3.5% of the eligible loan (a combined deposit of 4% - 7%). Currently, CalCAP matches the Lender contribution, making the total Loss Reserve Account deposit between 6% and 10.5%.

As the result of receiving new Federal and State funds, the Authority in October agreed to increase the CalCAP contribution to Loss Reserve Accounts, eventually matching the total contribution of the borrower and lender. When the Federal funds are available, the Authority will be contributing between 4% and 7% of each qualified loan towards the loss reserve account.

Need for regulation changes. In response to receiving \$84.4 million from the passage of the Federal bill H.R. 5297, the Small Business Jobs Act, and \$6 million from the passage of California's AB 1632, CalCAP is proposing changes to the regulations to allow more businesses to participate. The proposed amendments to the existing regulations are the result of preliminary conversations with lenders and staff recommendations.

Stakeholder Involvement. On October 21, 2010, staff held a *Lender Roundtable Conference Call* to provide an open forum for staff to discuss the upcoming funding and to present the proposed changes to the program. Approximately 40 people participated in the Roundtable Meeting. Staff received very positive and excited feedback about the upcoming changes and opportunities in the CalCAP program.

Summary of Changes. The proposed amendments to the existing regulations were circulated to all CalCAP participating lenders before the *Lender Roundtable Conference Call* and each item was discussed at length. The proposed amendments are outlined below.

Substantive Regulation Changes

5. **Section 8070(r).** *Revise the definition of “Qualified Business” to include the term “Small Business Concern” and its definition. Increase the business size from “100 or fewer employees” to “500 or fewer employees”. Eliminate the annual revenue restriction.* Staff recognized that the “Qualified Business” and “Small Business Concern” definitions seemed to be independent from one another; however, they go hand in hand. The CalCAP statute defines this term as being the same as the meaning in Section 632 of the Title 15 of U.S. Code, or as otherwise provided in regulation of the authority. The definitions will now be combined and the statute will be referenced.

In May 2008, the Board authorized a decrease of the business size from 500 to 100 employees and imposed a \$10 million (over the previous three years) annual revenue cap on businesses. The Executive Director was seeking ways to conserve funds while maintaining CalCAP as a viable program. It was estimated that CalCAP would save approximately \$750,000 annually by making those changes.

The receipt of the new State and Federal funds allows for an increase to the business size and an elimination of the annual revenue restriction.

6. **Section 8070(s)(6).** *Establish a maximum total loan amount of \$5 million for any one loan.* The Federal funds guidelines allow a loan amount up to \$5 million. This exceeds CalCAP’s current restriction of \$1.5 million over the previous three years. The maximum loan size includes the amount enrolled in the CalCAP Program plus any additional amount that is not enrolled.
7. **Section 8070(s)(7).** *Increase the allowable enrolled loan amount for a borrower from any one Lender to \$2.5 million.* The receipt of the Federal funds will allow the Authority to increase the maximum enrolled amount back to \$2.5 million. The change will also allow borrowers to borrow the maximum loan amount from more than one Lender. Borrowers are no longer restricted to a total loan amount over a specific period of time. As part of the 2008 Program changes to conserve funds, the maximum amount that could be loaned one Borrower over a three year period was reduced to \$1.5 million.
8. **Section 8070(v).** *Eliminate the “Small Business Concern” definition.* The Small Business Concern definition will be combined with the “Qualified Business” definition (8070(r)).
9. **Section 8072(c)(21).** *Revise the certification that the enrolled loan amount does not exceed \$2.5 million.* This revision corresponds to the changes made in 8070(s)(7).
10. **Section 8072(j).** *Eliminate the requirement to submit a “Notification of Work-Out Status” form.* The information provided on this form will now be submitted in the quarterly reports submitted by each Lender to CPCFA.
11. **Section 8073(c)(2).** *Add an additional rating entity to the list of entities the Authority uses to verify the financial viability of a lending institution.* The Authority is adding LACE

12. Financial Corporation to the list of rating entities, as recommended by the Investments Division of the State Treasurer's Office.

Attachment A is a redline version of those portions of the CalCAP regulations that highlights the proposed amendments in double underline and double strike through.

Regulatory Process. After Authority approval to amend the existing regulations, emergency and permanent rulemaking packages will be filed with the Office of Administrative Law (OAL). The Authority may adopt and amend regulations on an emergency basis pursuant to Health and Safety Code Section 44520(b). The public may comment on the proposed amended regulations within 5 calendar days after the Authority files the regulations for OAL review. OAL may review the regulations up to 10 calendar days. After OAL approval, the emergency regulations are effective for 180 days during which the Authority will begin the permanent rulemaking process. The permanent rulemaking package will be presented to the Board prior to the expiration of the emergency regulations.

To begin the permanent rulemaking process, the Authority will prepare a notice of a proposed rulemaking to be published in the California Regulatory Notice Register, mail the notice to our participating lenders and interested persons, and post the notice, text, and initial statement of reasons on our website. The Notice starts a 45-day public comment period. After that time, staff will review and respond to any comments and present the final form of the regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15-day public comment period before Authority approval. After Authority approval, a permanent rulemaking file is submitted to OAL, and OAL has 30 working days to review the regulations for compliance with the Administrative Procedure Act and the Authority's statute. Once OAL approves the regulations, they are filed with the Secretary of State and become effective 30 days later.

Timeline. Outlined below is the estimated schedule.

Emergency Regulations

| | |
|-------------------|--|
| November 8, 2010 | 5-day Notice posted on CalCAP site and sent to Lenders. |
| November 17, 2010 | The Board approves the emergency regulations. |
| November 17, 2010 | Emergency regulations filed with OAL. |
| November 22, 2010 | Public comment period ends. |
| November 29, 2010 | OAL review period ends. Emergency regulations are filed with the Secretary of State and are in effect. |
| May 28, 2011 | Emergency regulations expire. |

Permanent Regulations

| | |
|-------------------|---|
| November 30, 2010 | The <i>Rulemaking File</i> and Notice of Publication are filed with the Office of Administrative Law (OAL). The Notice of Proposed Regulatory Action is issued. |
| December 10, 2010 | OAL publishes Notice and 45-day public comment period begins. |

| | |
|-------------------|---|
| January 24, 2011 | Public comment period regarding proposed regulations ends. |
| January 25, 2011 | Public Hearing Scheduled. |
| January 26, 2011 | Deliver permanent regulation package to OAL for 30-day review* |
| February 25, 2011 | OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. |
| March 27, 2011 | Permanent regulations become effective. |

*If public comments are received that warrant substantial modifications to the proposed regulations, then the process will be lengthened to accommodate a 15-day comment period as follows:

| | |
|-------------------|--|
| January 26, 2011 | Proposed regulation amendments are modified and Notice Proposed Changes is issued to initiate a 15-day comment period. |
| February 10, 2011 | 15-day comment period ends. |
| February 11, 2011 | Deliver permanent regulation package to OAL for 30-day review. |
| March 13, 2011 | OAL issues Approval of Certificate of Compliance and files regulations with the Secretary of State. |
| April 12, 2011 | Permanent regulations become effective. |

Recommendation. Staff recommends adoption of a resolution to amend regulations for the CalCAP Program and authorize staff to undertake emergency and permanent rulemaking proceedings and other actions related to CalCAP regulation revisions.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY APPROVING REGULATIONS AND AUTHORIZING EMERGENCY
AND PERMANENT RULEMAKING PROCEEDINGS AND OTHER ACTIONS
RELATED THERETO, INCLUDING THE PUBLIC NOTICE AND COMMENT
PROCEDURES**

WHEREAS, the California Pollution Control Financing Authority (the "Authority") is authorized by California Health and Safety Code Sections 44520(a) and 44559.5(f) to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority is authorized by California Health and Safety Code Section 44520(b) to adopt regulations relating to small business as emergency regulations; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its Capital Access Program for Small Businesses (the "Program") set forth in Article 7 of Division 11 of Title 4 of the California Code of Regulations, are necessary to be adopted at this time to administer the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority as follows:

Section 1. The proposed form of regulations presented at the November 17, 2010, meeting are hereby approved in substantially the form submitted. The Chair, Executive Director, or Deputy Executive Director is hereby authorized, for and on behalf of the Authority, to proceed with the public notice and comment procedures and file such regulations, with the supporting documentation required by law, for the purposes of adopting these as emergency regulations and later as permanent regulations.

Section 2. The Chair, Executive Director, or Deputy Executive Director of the Authority are hereby authorized and directed to take such actions, including making or causing to be made such changes to the regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents that they may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon its approval.